

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 ERVIN MIDDLETON,

5 Plaintiff,

6 v.

7 CCB CREDIT SERVICES, INC.,

8 Defendant.

Case No. 2:12-cv-02012-APG-VCF

**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT**

(Dkt. No. 29)

9  
10 Before the Court is Defendant CCB Credit Services, Inc.'s Motion for Summary  
11 Judgment. For the reasons discussed below, I grant the motion.

12 **I. BACKGROUND**

13 Plaintiff Ervin Middleton seeks \$3,000.00 for Defendant CCB Credit Services, Inc.'s  
14 alleged violations of the Fair Debt Collection Practices Act ("FDCPA") and the Fair Credit  
15 Reporting Act ("FCRA"). (*See* Doc. # 1-1.) Defendant removed the action to federal court and  
16 now seeks summary judgment on the claims, arguing both that the FDCPA claim is barred by the  
17 applicable statute of limitations and that Plaintiff cannot state a claim under the FCRA. I agree.  
18 Because Plaintiff has failed to raise a genuine issue of material fact with respect to Defendant's  
19 arguments, the motion is granted.

20 The following facts are undisputed. Defendant is a collection agency that received the  
21 referral of Plaintiff's \$428.79 credit card debt from the original creditor First Premier Bank.<sup>1</sup>  
22 (Dkt. # 24, Krech Decl. ¶¶ 3–5.) Defendant attempted to collect the debt from Plaintiff, but was  
23 unsuccessful. (*Id.* at ¶ 5.) Defendant then closed the account regarding Plaintiff's debt, returned  
24 the account to the original creditor, and ceased collection activity. (*Id.* at ¶ 5, Ex. B).

25 When First Premier Bank first referred the debt, Defendant conducted a "soft-pull" of  
26 Plaintiff's credit—an inquiry into Plaintiff's credit information that does not affect the credit  
27

---

28 <sup>1</sup> Plaintiff also filed a complaint against First Premier Bank in this District. *Middleton v. First Premier Bank*, No. 2:13-cv-01344-MMD-GWF.

1 score—to verify information about the Plaintiff and to ensure the Plaintiff was not in bankruptcy.  
2 (*Id.* at ¶ 10, Ex. B.) Defendant did not, however, request or obtain a copy of Plaintiff’s credit  
3 report—a “hard pull,” which would have an effect on Plaintiff’s credit score. (*Id.* at ¶ 11.)  
4 Additionally, Defendant never furnished any information regarding Plaintiff’s debt to the credit  
5 reporting agencies and never received notice from a credit reporting agency that Plaintiff was  
6 disputing any information on his credit report. (*Id.* at ¶¶ 12–13.)

## 7 **II. DISCUSSION**

### 8 **A. Legal Standard**

9 The purpose of summary judgment is to avoid unnecessary trials when there is no dispute  
10 as to the facts before the court. *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471  
11 (9th Cir. 1994). Summary judgment is appropriate when “the pleadings, depositions, answers to  
12 interrogatories, and admissions on file, together with the affidavits, if any, show there is no  
13 genuine issue as to any material fact and that the movant is entitled to judgment as a matter of  
14 law.” *See Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)). An  
15 issue is “genuine” if there is a sufficient evidentiary basis on which a reasonable fact-finder could  
16 find for the nonmoving party and a dispute is “material” if it could affect the outcome of the suit  
17 under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). Where  
18 reasonable minds could differ on the material facts at issue, however, summary judgment is not  
19 appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995). In evaluating a  
20 summary judgment motion, a court views all facts and draws all inferences in the light most  
21 favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d  
22 1100, 1103 (9th Cir. 1986).

23 The moving party bears the burden of informing the court of the basis for its motion,  
24 together with evidence demonstrating the absence of any genuine issue of material fact. *Celotex*,  
25 477 U.S. at 323. Once the moving party satisfies Rule 56’s requirements, the burden shifts to the  
26 party resisting the motion to “set forth specific facts showing that there is a genuine issue for  
27 trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may not rely on denials in the pleadings  
28 but must produce specific evidence, through affidavits or admissible discovery material, to show

1 that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and  
2 “must do more than simply show that there is some metaphysical doubt as to the material facts.”  
3 *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). “The mere  
4 existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.”  
5 *Anderson*, 477 U.S. at 252. The Court may consider only evidence which might be admissible at  
6 trial in ruling on a motion for summary judgment. Fed. R. Civ. P. 56(c).

## 7 **B. Analysis**

8 Defendant argues that summary judgment should be granted in its favor because any claim  
9 under the FDCPA would be barred by the applicable statute of limitations and Plaintiff cannot  
10 state a claim under the FCRA. Defendant has established that its collection efforts ceased on May  
11 19, 2011. (Dkt. # 24, ¶ 5, Ex. B.) Defendant has further established that it did not report any  
12 information to the credit reporting agencies and never received any information from those  
13 agencies informing them Plaintiff was disputing information in the credit report. (*Id.* at ¶¶ 12–  
14 13.) Plaintiff has not produced any evidence disputing this evidence or showing a genuine issue  
15 of material fact.

### 16 *1. FDCPA Claim*

17 Civil claims arising under the FDCPA are subject to a one-year statute of limitations from  
18 the date of the violation. 15 U.S.C. § 1692k(d); *Naas v. Stolman*, 130 F.3d 892, 893 (9th Cir.  
19 1997). Plaintiff’s FDCPA claim is based on allegations of harassing and oppressive behavior in  
20 connection with Defendant’s collection of the debt. (Dkt. #28.) However, Defendant ceased all  
21 collection activities on May 19, 2011. (Dkt. #24, ¶ 5; Ex. B.) Plaintiff has failed to produce any  
22 evidence disputing that date or showing a genuine issue of material fact with respect to when  
23 Defendant ceased its collection activities. Thus, even assuming Plaintiff’s allegations of  
24 harassing and oppressive behavior are true, Plaintiff was required to file this action by May 19,  
25 2012. Plaintiff’s complaint was not filed until October 6, 2012. (Doc. #1, Ex. A.) Consequently,  
26 any action for Defendant’s violations of the FDCPA is barred by the statute of limitations, and  
27 Defendant is entitled to judgment as a matter of law.  
28

1                   2. *FCRA Claim*

2           Defendant also contends the Plaintiff cannot state a claim under the FCRA.<sup>2</sup> The purpose  
3 of the FCRA is “to protect consumers from the transmission of inaccurate information about them  
4 . . . and to establish credit reporting practices that utilize accurate, relevant, and current  
5 information in a confidential and responsible manner.” *Guimond v. Trans Union Credit*  
6 *Information Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) (citations removed). Although the FCRA’s  
7 requirements primarily apply to credit reporting agencies, it imposes some obligations on parties  
8 using the consumer reports and reporting information to the credit reporting agencies. *See* 15  
9 U.S.C. §§ 1681–1681x. Generally, those obligations are to request consumer reports only for  
10 “permissible purposes,” 15 U.S.C. §§ 1681b, 1681n(a)(1)(B), provide the consumer with certain  
11 information if denying the extension of credit based on information a consumer report, 15 U.S.C.  
12 § 1681m, provide accurate information to the credit reporting agencies, 15 U.S.C. § 1681s-2(a),  
13 and take certain actions after receiving notice from a credit reporting agency that the consumer  
14 has disputed information contained in a report, 15 U.S.C. § 1681-2s(b).

15           Plaintiff cannot state a claim under the FCRA because Defendant has established that  
16 none of the obligations under the FCRA is applicable here. First, even assuming the “soft pull” of  
17 Plaintiff’s credit falls under the purview of the FCRA, “collection of an account of” the consumer  
18 is a “permissible purpose” for requesting a consumer report. 15 U.S.C. § 1681b(a)(3)(A).  
19 Second, Defendant did not deny the extension of credit to Plaintiff, and thus the obligation to  
20 provide the mandated information was not triggered. Third, Defendant has established that it did  
21 not report any information to a credit reporting agency so there can be no liability for  
22 inaccuracies. Finally, Defendant has established that it never received notice of a dispute from a  
23 credit reporting agency and, as such, none of the corresponding obligations was triggered. As  
24

---

25           <sup>2</sup> Defendant initially argues that Plaintiff’s Complaint fails to state a claim because its sole  
26 conclusory allegation that Defendant owes Plaintiff money “for violations of FCRA” is  
27 insufficient under the *Iqbal/Twombly* pleading standard. Although true, it must be remembered  
28 that Plaintiff originally filed the complaint in Nevada small claims court, using the form provided  
in compliance with Rule 89 of Nevada’s Justice Court Rules of Civil Procedure. Defendant may  
not remove a small claims action to federal court, and then seek summary judgment based on the  
fact that the small claims form does not comply with the federal pleading standard.

1 Plaintiff has not provided any evidence showing a genuine issue of material fact with respect to  
2 these obligations, Defendant is entitled to judgment as a matter of law.

3 **III. CONCLUSION**

4 IT IS THEREFORE ORDERED that Defendant CCB Credit Services, Inc.'s Motion for  
5 Summary Judgment is GRANTED. The Clerk of the Court is instructed to enter judgment in  
6 favor of CCB Credit Services, Inc. and to close the case.

7 DATED THIS 14th day of July, 2013.

8  
9   
10 \_\_\_\_\_  
11 ANDREW P. GORDON  
12 UNITED STATES DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28